



PUBLIC WORKS

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May 19, 2006

Bill Moore
WA Department of Ecology
Water Quality Program
PO Box 47600
Olympia, WA 98504-7600

RE: Western Washington National Pollutant Discharge Elimination System (NPDES) Phase II Draft Permit Comments

Dear Mr. Moore,

We would like to express our gratitude in considering our comments regarding the NPDES Phase II Draft Permit as a vital part of the decision making process. Our comments regarding these issues are included in the following pages.

Annual Cost Tracking

There are several reasons why annual cost tracking is an unnecessary requirement in this permit. Tracking annual costs will not offer any real evaluation of program success or meaningful analysis showing compliance. Each permittee will spend varying amounts towards implementing their own program that will be tailored to their system and region. The amount of funding spent towards program implementation does not and should not indicate permit compliance in any way.

Each jurisdiction has different organizational structures and accounting practices so reported costs will be incomparable. Equipment and practices also change regularly and result in changing costs. Therefore, it is improbable that Ecology will be able to compare reported costs and effectiveness, even for similar programs, across municipalities. Further, it should not be a goal of this permit to gauge permittees' budgets. The amount of funds expended during one particular permit term should not be used as a standard or goal to achieve in future permit renewals.

Finally, cost tracking will require a significant amount of effort by agencies as well as potentially modifying their accounting practices to collect the data which will most likely be of little to no value.

For these reasons, the City recommends that this requirement should be completely removed from the permit.

S5 Stormwater Management Program for Cities, Towns and Counties

S5.C.1. Public Education and Outreach

It is extremely difficult to quantify targeted behavioral changes resulting from the adoption of a public educational program. Furthermore, many communities in this area tend to have significant regular residential change. These changes make it difficult to evaluate the success of an educational program. It takes years of exposure for educational programs to have an impact on societal behavior and this is beyond the scope of the permit requirements.

S5.C.3 Illicit Discharge Detection and Elimination

The permit states that permittees must detect, remove and prevent not only illicit connections (cross connections) but also illicit discharges, which include all non-stormwater discharges. Further, this section requires the permittee to adopt the Illicit Discharge Detection and Elimination guidance manual. This manual requires source tracking of illicit connections and discharges using expensive chemical analysis to discover the source of contamination. Utilizing chemical analysis to source track illicit discharges as well as illicit connections is very expensive and would be a strain on limited resources for many cities.

S5.C.3.b.ii

In section S5.B.II line 22 and 23 require “the permittee to adopt a regulatory mechanism to prohibit discharges from lawn watering and other landscape irrigation runoff. These must be reduced through, at a minimum, public education activities (see Section S.5.C.1) and water conservation efforts.” However, lawn watering and other landscape irrigation runoff is considered an Illicit Discharge. Permittees are required to include an “ongoing program to detect, remove, and prevent illicit connections, discharges, and improper disposal, including spills, into the municipal separate storm sewers owned and operated by the Permittee.” In addition, as described in S5.C.3.c. “Each Permittee must develop and implement an ongoing program to detect and address non-stormwater discharges, spills, illicit connections and illegal dumping.” The permit is unclear as to the goal and extent of requirements targeting lawn watering.

Permittees should not be required to prohibit discharges from lawn watering and other irrigation runoff. It is problematic to require a permittee to adopt an enforcement regulation that prohibits lawn watering discharges. Education programs related to preventing lawn watering runoff are adequate measures in preventing water from entering storm sewer systems as well as promoting water conservation but it is not clear that this constitutes a prohibition enforcement action. Considering lawn watering an illicit discharge and requiring Municipal Separate Storm Sewers (MS4) to remove this discharge would be practically impossible. Lawn watering should be taken out of this section or more clearly defined.

S5.C.5 Pollution Prevention and Operation and Maintenance for Municipal Operations

S5.C.5.d Catch Basin Inspection Program

The intent of the catch basin inspection program should be outcome based and focus on allowing public agencies the flexibility to have a program that meets maintenance standards. The City recommends the permit allow the expertise of local agencies in determining appropriate inspection program. This approach would be a documented inspection program based on the experience of the local municipal employees. The purpose of the inspection program is to protect water quality by examining the functionality and maintenance needs of the system and should not be based on inspecting every catch basin or stormwater facility within a given period of time. Further, the reporting requirement should be based on inspection program parameters and not solely on the number of catch basins inspected over a period of time. The City requests that the “circuit basis” inspection program as cited in the Phase I Municipal Stormwater Permit in S5.C.9.b.iv.(1) be added to this permit.

S8: Monitoring

S8.C.1.c Runoff treatment Best Management Practice (BMP) effectiveness monitoring

It is not appropriate to require Permittees to monitor BMP effectiveness for already proven and tested BMP's. Extensive research has gone into developing and monitoring these BMP's prior to

including them in the Western Washington Stormwater Manual as well as other local stormwater manuals and MS4's should not be required to provide research for BMP effectiveness. In addition, this monitoring requirement will force MS4's to reallocate much needed funds from system maintenance and improvement work.

The City of Kent requests that Ecology form a Stormwater Partnership with Phase I and Phase II jurisdictions, environmental groups, other interested stakeholders, and Ecology staff from the Water Quality (NPDES) Program, Environmental Assessment Program, and a policy level staff person that spans internal program divisions. This on-going partnership will be responsible for:

- Coordinating with the State on a stormwater baseline and trend assessment monitoring strategy at a watershed level that would link and coordinate with salmon recovery and Puget Sound Initiative programs.
- Developing and replacing existing monitoring language in phase I and II permits with language that reflects a monitoring program that would provide:
 - Meaningful management information for improving BMP selection and making other stormwater management decisions
 - Reliable indicators that SWMP actions were making reasonable progress towards desired outcomes
 - Coordination and analysis of information across jurisdictions and agencies through the partnership to reduce redundancies, realize efficiencies, and improve transparency

Kent requests Ecology to convene the Partnership as soon as possible to allow timely issuance of the NPDES Municipal stormwater permits. The City of Kent believes this partnership should be a voluntary alternative and would provide an advantageous option to isolated and uncoordinated monitoring programs.

Appendix 1 – Minimum Technical Requirements for New Development and Redevelopment

Pre-developed Forested Conditions

The permit requires that mitigated stormwater flows meet a predevelopment forested condition. Conditions in urbanized and developed areas make this requirement unattainable and would put permittees in violation of their permit leaving them legally vulnerable. The mitigation requirements in the draft permit also leaves jurisdictions vulnerable to “takings” claims.

The City's recommendation is that the project proponent be required to mitigate flows to the actual predevelopment land use condition. This mitigation is still in keeping with the anti-degradation water quality standard since it would not result in a lowering of the current water quality.

Reference Guidance Documents

The permit cites outside documents such as the “2005 Stormwater Management Manual for Western Washington” and “Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments”, Center for Watershed Protection, October 2004. Both documents are cited as requirements but have not been through a regulatory process. As such they cannot be mandated as conditions through permit issuance nor serve as regulatory instruments. Ecology must allow that wherever the permittee is directed to outside documents that it is clearly stated that these are recommendations only and that other alternatives or equivalents are offered. References to the Western Washington Stormwater Manual must include language that

references only the mandatory sections of the manual, and not the recommended sections or appendices. Permittees should not be required to adopt the entire manual by reference alone. Appendix 1 continues to refer back to sections of the Stormwater Management Manual that are not in the appendices. All parts referenced in the Appendix text should be contained within the permit document.

The City has concerns that Phase II jurisdictions will be paying new permit fees and the Department of Ecology will not have the staffing in place to properly support this permit program. The exposure to third party lawsuits will increase as a result of this permit without adequate support from Ecology. The permit should only include elements that can be accomplished by Ecology and the permittee.

The Draft Phase II Permit appears to go well beyond the six mandatory minimum EPA guidelines "+2" agreement that local jurisdictions and Ecology agreed to through the advisory committee process in late 2003. As such, the City is concerned about costs, practicability, and legal takings issues.

Thank you again for your consideration of the City's comments and concerns on this extremely important Permit. Please contact Jefferson Davis at 253-856-5584 with any questions you may have.

Sincerely,

A handwritten signature in cursive script that reads "Larry R. Blanchard". The signature is written in dark ink and is positioned above the printed name and title.

Larry Blanchard
Public Works Director

Copy: Gary Gill, P.E., City Engineer
Michael Mactutis, P.E., Environmental Engineering Manager
Jefferson Davis, Environmental Engineer